

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
CIVIL APPELLATE JURISDICTION.**

SECOND APPEAL NO. 415 OF 2015

Shri. Shankar Dadu Patil	... Appellant.
V/s.	
Shri. Tukaram Dadu Patil	... Respondent

Mr. Kedar Lad i/b P. D. Dalvi for the appellant.

**CORAM : K. K. TATED, J.
DATED : 15/10/2015.**

PC.:

. Heard learned Counsel for the appellant.

2 This Second Appeal is preferred by plaintiff challenging the concurrent findings of fact recorded by both the Courts below.

3 Few facts for the matter are as under:

i) It was the case of the appellant plaintiff that his predecessor i.e. father had purchased the suit property i.e. portion of land from 107/192 of Gat No. 1035 situated at village Gogve, Taluka: Shahuwadi, District: Kolhapur by Sale Deed dated 15.04.1957. The plaintiff filed Regular Civil Suit no. 73 of 1991 in the court of Civil Judge, Junior Division, Malkapur for an order of injunction restraining the respondent defendant from disturbing his peaceful possession of the suit property. On the basis of pleading, the Trial Court framed the following four issues for determination.

ISSUES	FINDINGS
1. Does Plaintiff prove his possession over suit land referable to his legal title?	No.
2. Does he prove the alleged obstruction?	No.
3. Is plaintiff entitled to the relief sought?	No
4. What order and decree?	As pr final order.

ii) The Trial Court by the Judgment and Decree dated 31.08.2000 dismissed the plaintiff's suit holding that plaintiff failed to prove his exclusive possession over the suit property apart from that, the Trial Court also held that the plaintiff failed to prove that the suit property was purchased by the plaintiff's father by Sale Deed dated 15.04.1957 by his own income.

iii) Being aggrieved by the said decree passed by the Trial Court, the plaintiff preferred Regular Civil Appeal no. 371 of 2000 in the Court of learned District Judge, Kolhapur. The Appellate Court framed following points for consideration.

Sr. No.	Points	Findings
1	Whether the appellants prove that the suit land is their self acquired property?	No.
2	Whether appellants prove obstruction at the hands of respondents?	No.
3	Whether appellants are entitled to	No.

	grant perpetual injunction?	
4	Whether the findings of the Trial Court are perverse?	No
5	What order?	As per final order.

iv) After considering the evidence on record, the Appellate Court confirmed the decree passed by the Trial Court and dismissed the Appeal. Hence, the present Second Appeal.

4 The learned Counsel Mr. Kedar Lad appearing on behalf of plaintiff submits that both the courts below failed to consider the fact that the father of the plaintiff purchased the suit property by Sale Deed dated 15.04.1957 and same was in the name of plaintiff's father. He submits that both the Court below failed to consider that, once the property is self acquired property from the independent fund, then the owner of the said property is entitled for an injunction against the other members of joint family from disturbing his possession. On the basis of these submissions the learned Counsel for the plaintiff submits that the Judgment and Decree passed by both the Courts below required to be set aside and this Hon'ble Court be pleased to grant an injunction restraining respondent defendant from disturbing the plaintiff's possession in respect of suit property.

5 I heard learned Counsel for the appellant at length. It is to be noted that both the Courts concurrently held that plaintiff failed to prove his exclusive possession over the suit property. The plaintiff has not placed on record any documentary evidence to show his exclusive

possession over the suit property though the suit property was purchased by the father of the plaintiff by Sale Deed dated 15.04.1957. The same was purchased from the nucleus of the HUF. The plaintiff failed to prove that the suit property was self acquired property. Considering these facts and concurrent findings of facts recorded by both the Courts below, I do not find any substantial question of law involved in the Second Appeal.

6 Hence, Second Appeal stands rejected.

(K.K.TATED, J.)